



April 12, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2000-1455

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134394.

The Texas Department of Criminal Justice (the "department") received a request for four categories of information relating to any and all grievances, claims of harassment and/or retaliation, or lawsuits brought against the department by both inmates and staff.¹ You claim that the information is excepted from disclosure under sections 552.101, 552.107 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹Specifically, the requestor seeks disclosure of: "(1.) A listing of all case numbers, with names, nature of allegation, and disposition of cases where applicable, of allegations or complaints made by employees that have been harassed and/or retaliated against by coworkers or supervisors. Please include cases filed with Internal Affairs, Equal Employment Opportunity cases, and Labor Relation cases. (2.) Yearly statistics on inmate grievances for harassment and/or retaliation filed with the Offender Grievance office and/or Internal Affairs. Please include, where applicable, names, nature of grievance, and disposition of cases. (3.) A listing of lawsuits brought against TDCJ by inmates and staff citing harassment and/or retaliation by TDCJ employees. Please include, where applicable the names, nature of allegation, and disposition of suits. (4.) A list of grievances by offenders or TDCJ staff citing harassment and/or retaliation that resulted in cash settlements being made through mediation and/or arbitration. Where applicable, please include names, nature of grievance, and amount of settlement involved."

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.301 of the Government Code requires a governmental body to release requested information or to request a decision from the Attorney General within 10 business days of receiving a request for information the governmental body wishes to withhold. It appears from the documents submitted to this office that the department received the request for information on February 2, 2000. You did not request a decision from this office until February 18, 2000. Consequently, you failed to request a decision within the 10 business days required by section 552.301(b) of the Government Code.

Additionally, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You have submitted to this office "exemplars" of the type of information requested under categories two and four of the request. You did not, however, submit to this office the specific information or representative samples of the types of information requested in categories one and three of the request.

When a governmental body fails to request a decision within 10 business days of receiving a request for information or fails to submit to this office the information required in section 552.301(e), the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* In your correspondence with this office, you have made no mention of the items requested in category three of the request, cited no exceptions applicable to this information and have not submitted information or representative samples of the information responsive to request category three within the fifteen business day statutory deadline. Furthermore, you have not shown such a compelling interest to overcome the presumption that the information in category three is public. Accordingly, you must release the information requested in category three. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352. As noted above, you failed to request an opinion from this office within ten business days and it does not appear that you have submitted representative samples of the information requested in category one of the request. Thus, the information at issue is presumed public. However, this presumption of openness may be overcome by exceptions under sections 552.101 and 552.131.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common law right of

privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common law privacy to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

We note that, in the instant case, the requestor seeks the disclosure of any and all harassment complaints, not just instances of sexual harassment. *Ellen* is applicable only in a sexual harassment scenario. Thus, information which deals with non-sexual harassment or retaliation does not fall within the protection of section 552.101 and must be released. For those responsive documents which deal with *sexual* harassment and contain an adequate summary of the sexual harassment complaint investigation, you must release the summary with the redaction of the victim's and witnesses' identifying information; the victim's and witnesses' statements need not be released. For those documents which contain no adequate summary of the sexual harassment complaint investigation, the victim's and witnesses' statements may not be withheld under section 552.101. However, based on *Ellen*, the department must withhold the victim's and the witnesses' identifying information. You must release the remaining information.³

Section 552.131 of the Government Code excepts from disclosure information obtained or maintained by the department which relates to an inmate who is confined in a facility operated by or under contract with the department. We note, however, that basic information

³Please note that section 552.117 prohibits the release of the home address, home telephone number, social security number or family member information of employees of the Texas Department of Criminal Justice.

regarding an allegation of a crime involving an inmate must be released in accordance with section 552.029(a)(8) of the Government Code. This office has determined that basic information includes the time and place of the incident, names of inmates and department officials directly involved in the incident, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Therefore, those documents that relate to inmate grievances and are responsive to categories two and four of the request must, except as noted above, be withheld from disclosure under section 552.131.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should

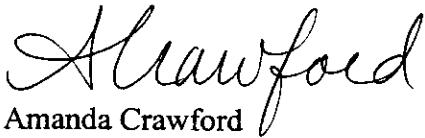
⁴This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "A Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 134394

Encl. Submitted documents

cc: Mr. Nate Blakeslee
Texas Observer
307 West 7th Street
Austin, Texas 78701
(w/o enclosures)